UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

RUTH ANN HAWTHORNE, Plaintiff, v. CARRINGTON MORTGAGE SERVICES, LLC, a Delaware Corporation, Defendant.	CIVIL ACTION CASE NO. 17-cv-104 JURY TRIAL DEMANDED

COMPLAINT FOR RELIEF PURSUANT TO THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT, FOR VIOLATIONS OF THE BANKRUPTCY DISCHARGE INJUNCTION, AND FOR VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT

COMES NOW Plaintiff, RUTH ANN HAWTHORNE ("Plaintiff"), by and through her attorneys, the Law Offices of William A. Mueller, L.L.C., and complains of the Defendant, CARRINGTON MORTGAGE SERVICES, LLC, A DELAWARE CORPORATION ("CARRINGTON"), as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action against CARRINGTON for violations of the Fair Debt Collection Practices Act ("FDCPA") pursuant to 15 U.S.C. §1692, et seq., for violations of the Bankruptcy Discharge Injunction pursuant to 11 U.S.C. §524, and for violations of the Illinois Consumer Fraud and Deceptive Business Practices Act pursuant to 815 ILCS 505/1 et seq.

JURISDICTION AND VENUE

2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §1692, 47 U.S.C §227, and 28 U.S.C. §§ 1331, 1337, as the action arises under the laws of the United States. Supplemental jurisdiction exists for state law claims pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as CARRINGTON transacts business in the Southern District of Illinois and all or substantially all of these events or omissions giving rise to these claims occurred within the Southern District of Illinois.

PARTIES

4. Plaintiff RUTH ANN HAWTHORNE is a natural person who at all times relevant resided in either Belleville, Illinois or Fairview Heights, Illinois, and is a "consumer" as defined by the FDCPA, 15 U.S.C. §1692a(3).

5. At all times relevant to this action, CARRINGTON was a corporation incorporated under the laws of the State of Delaware with its principal place of business located at 1600 S. Douglass Rd., Ste. 200-A & 110, Anaheim, CA 92806. CARRINGTON'S Registered Agent is CT Corporation System, 818 West 7th Street, Los Angeles, CA 90017.

6. CARRINGTON is in the business of collecting defaulted mortgages and debts in the state of Illinois.

7. CARRINGTON qualifies as a "debt collector" as defined by the FDCPA, 15 U.S.C. §1692a(6), because it regularly uses the mail and/or the telephone to collect, or to attempt to collect, delinquent consumer accounts.

8. CARRINGTON qualifies as a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6) because the debt which is the subject of this complaint was in default when it acquired rights in the debt.

9. CARRINGTON qualifies as a "debt collector" as defined by the FDCPA, 15 U.S.C. § 1692a(6) because the principal purpose of its business is to collect debt and it regularly collects or attempts to collect defaulted debts owed to another party.

10. At all times relevant to this complaint, CARRINGTON was collecting on a consumer debt as defined by 15 U.S.C. §1692a.

FACTS SUPPORTING CAUSE OF ACTION

11. On or about June 19, 1997, Plaintiff and her husband, James E. Hawthorne, obtained a residential mortgage secured by real property located at 41 Highview Lane, Belleville, Illinois 62223 from Associates Finance, Inc. ("subject debt"). *See* attached Exhibit 1, a true and correct copy of the relevant Mortgage and Note.

12. On November 7, 2012, the servicing of the loan was transferred from CitiFinancial Services, Inc., successor by merger to CitiFinancial Services, Inc. 309, LLC, successor by merger to Associates Finance, Inc. to CitiMortgage, Inc. *See* attached Exhibit 2, a true and correct copy of the Assignment.

13. On February 23, 2016, the servicing of the loan was transferred from CitiMortgage, Inc., to Carrington Mortgage Services, LLC. *See* attached Exhibits 3a and 3b, a true and correct copy of the servicing transfer documents received by the Plaintiff.

14. On January 28, 2010, Plaintiff had filed a Chapter 13 petition in the United States Bankruptcy Court, Southern District of Illinois, case number 10-30206, invoking the protections of the automatic stay pursuant to 11 U.S.C. §362. *See* attached Exhibit 4, a true and correct copy of the Notice of Bankruptcy.

15. Plaintiff listed CitiMortgage ("Original Creditor")(hereafter "Citi") as a creditor for a debt ("subject debt") on her bankruptcy Schedule D. *See* attached Exhibit 5, a true and correct copy of Schedule D filed with Plaintiff's Bankruptcy Petition.

16. On February 4, 2010, the Chapter 13 Trustee sent Citi a notice of the bankruptcy filing. *See* attached Exhibit 6, a true and correct copy of the Certificate of Notice executed by the Chapter 13 Trustee establishing service of the notice of bankruptcy filing upon Citi.

17. Plaintiff's 341(a) meeting of creditors was held on March 4, 2010.

18. No representative of Citi attended the meeting of creditors.

19. Though Citi did not file an actual entry of appearance in Plaintiff's Chapter 13 proceeding, on July 27, 2012, Citi did file an Appearance in an adversary proceeding commenced by the Plaintiff against Citi for the inappropriate addition of an arrearage amount (later identified as "Extension Interest") to her billing statement. *See* attached Exhibit 7, a true and correct copy of the Entry of Appearance, Exhibit 8, a true and correct copy of the complaint filed, and Exhibit 9, a true and correct copy of the Agreed Order entered to resolve the adversary complaint.

20. On November 20, 2012, Citi did file a proof of claim in Plaintiff's Chapter 13 proceeding, and on February 11, 2013, Citi filed an amended proof claim in her case. *See* attached Exhibits 10 and 11, true and correct copies of the proofs of claim filed by Citi. Thus, Citi became subject to the Bankruptcy Court's jurisdiction.

21. The November 20, 2012, claim filed by Citi included an arrearage component in the amount of $738.97.

22. The amended claim filed on February 11, 2013, indicated no arrearage, despite having listed the last payment received as February 6, 2010. See page 4 of Exhibit 11.

23. The Plaintiff's Chapter 13 provided for direct payments to Citi from the Plaintiff. *See* attached Exhibit 12, a true and correct copy of the Chapter 13 Plan served upon Citi.

24. On March 26, 2010, the Honorable Laura K. Grandy entered an Order Confirming Plaintiff's Chapter 13 plan, which was mailed to all creditors on the service list including Citi. *See* attached Exhibit 13, a true and correct copy of the Order Confirming Plan.

25. On November 14, 2014, the Plaintiff converted her Chapter 13 proceeding to one under Chapter 7 of the Bankruptcy Code. *See* attached Exhibit 14, a true and correct copy of the Order converting case.

26. No Reaffirmation Agreement of the subject debt was requested by Plaintiff, nor was one offered by the Defendant in the Plaintiff's converted case.

27. On February 23, 2015, the Plaintiff received an Order of Discharge of all debts included in her bankruptcy petition pursuant to 11 U.S.C. § 1328(a), including the "subject debt." *See* attached Exhibit 15, a true and correct copy of the Order of Discharge entered by the United States Bankruptcy Court for the Southern District of Illinois and the BNC Notice of Discharge served upon Citi.

28. The discharge order effectuated a discharge of the debt to the Original Creditor, providing as follows:

> The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise . . . to collect a discharged debt from the debtor. *Id.* at pg. 2.

29. Pursuant to 11 U.S.C. §§ 524, the Order of Discharge invoked the protections of the discharge injunction, prohibiting any acts to collect upon the subject debtor by Citi, CARRINGTON, or any other party.

CARRINGTON'S UNLAWFUL POST-DISCHARGE COMMUNICATION

30. On March 9, 2016, more than a year after the Plaintiff received her discharge, and with actual knowledge of Plaintiff's Bankruptcy discharge, CARRINGTON attempted to collect the

subject debt from Plaintiff personally by sending a payment demand ("dunning letter" entitled "Mortgage Statement") directly to the Plaintiff at her home address in Fairview Heights, Illinois. *See* attached Exhibit 16, a true and correct copy of the March 9, 2016, letter sent by CARRINGTON to Plaintiff.

31. The March 9, 2016, dunning letter sent by CARRINGTON sought to collect the subject debt and alleged a past due balance of $9,171.25, and reflected a total principal amount due in the amount of $51,797.21.

32. The March 9, 2016, dunning letter included a detachable payment coupon instructing Plaintiff to return to CARRINGTON with payment in the amount of $9,171.25 by April 1, 2016.

33. The March 9, 2016, dunning letter sent by CARRINGTON to Plaintiff included an item for "Default Cost Billed" in the amount of $2,937.25 which was not approved by the Bankruptcy Court. *Id.*

34. The reverse side of the Mortgage Statement includes Payment Information (addresses and other options for payment). All of this information is shown in very small letters and includes a statement regarding Bankruptcy and Debt Collecting. *Id.*

35. Furthermore, the statement provides as follows:

> "We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report." *Id.*

36. The Mortgage Statement, and the language contained therein, was very confusing to Plaintiff, an unsophisticated consumer, because the first page unequivocally demanded payment and included a payment stub and demanded the extra costs for the alleged default ("Default Cost Billed." *Id.*

37. On November 1, 2016, with actual knowledge of Plaintiff's Bankruptcy discharge, CARRINGTON sent a demand letter to the Plaintiff alleging that past due real estate taxes were required to be paid by the Plaintiff. This letter was sent to Plaintiff at her home address in Fairview Heights, Illinois. *See* attached Exhibit 17, a true and correct copy of the November 1, 2016, letter sent by CARRINGTON to Plaintiff.

38. On December 1, 2016, with actual knowledge of Plaintiff's Bankruptcy discharge, CARRINGTON sent a second demand letter to the Plaintiff alleging that past due real estate taxes were required to be paid by the Plaintiff. This letter was sent to Plaintiff at her home address in Fairview Heights, Illinois. *See* attached Exhibit 18, a true and correct copy of the December 1, 2016, letter sent by CARRINGTON to Plaintiff.

39. CARRINGTON'S collection efforts occurred with actual knowledge of Plaintiff's bankruptcy filing and subsequent discharge.

COUNT I
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

40. Plaintiff repeats and re-alleges paragraphs 1 through 39 as though fully set forth herein.

41. The subject debt is a "debt" as defined by FDCPA §1692a(5) as it arises out of a transaction due or asserted to be owed to another for personal, family or household purposes.

42. CARRINGTON is a "debt collector" because it acquired rights to the subject loan after it was in default. 15 U.S.C. § 1692a(6).

43. CARRINGTON violated 15 U.S.C. §§ 1692e(2), 1692e(5), 1692e(10), 1692f and 1692f(1) through its debt collection efforts of the "subject debt" which is a consumer debt.

44. CARRINGTON violated 15 U.S.C. §1692e(2) by falsely representing the character, amount, or legal status of the alleged debt as the subject debt was not owed by virtue of the Order of Discharge entered in her bankruptcy case.

45. CARRINGTON violated 15 U.S.C. §1692e(5) when it threatened to report Plaintiff to the credit bureaus for nonpayment of the subject debt.

46. CARRINGTON violated 15 U.S.C. §1692e(10) by falsely representing that the subject debt was collectible when it sent the bill to Plaintiff.

47. CARRINGTON violated 15 U.S.C. §1692f by employing unfair and unconscionable means to collect the subject debt by sending the dunning letters attempting to collect the subject debt which was discharged in Plaintiff's bankruptcy and not owed.

48. CARRINGTON violated 15 U.S.C. § 1692f(1) by attempting to collect amounts in excess of the amount of the actual debt by including a demand of Plaintiff in the dunning letter sent Plaintiff for "Default Cost Billed" in the amount of $2,937.25 which were not approved by the Bankruptcy Court.

49. Section 524(a)(2) of the Bankruptcy Code, commonly known as the "discharge injunction," prohibits "an act, to collect, recover, or offset any such debt as a personal liability of the debtor," and "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor." 11 U.S.C. §§524(a)(2).

50. CARRINGTON attempted to coerce Plaintiff into paying a debt that was not legally collectible because Plaintiff was protected by the Order of Discharge.

51. As an experienced debt collector, CARRINGTON knew or should have known not to send demand letters to a debtor that is protected by the Order of Discharge.

52. CARRINGTON knew or should have known that Plaintiff's pre-petition debt was uncollectable because of the Order of Discharge.

53. CARRINGTON appears to have no system in place to identify and cease the collection of debts included in or discharged in bankruptcy.

54. CARRINGTON'S failure to scan their database to prevent the unlawful collection of the subject debt was willful.

55. Plaintiff suffered from CARRINGTON'S unlawful collection activities.

56. Plaintiff suffered from emotional distress due to CARRINGTON'S unlawful attempts to collect the discharged debt, as she was led by CARRINGTON'S collection activities to believe her bankruptcy had no effect. The dunning letters were highly confusing to Plaintiff.

57. Plaintiff was unduly inconvenienced and harassed by CARRINGTON'S unlawful attempts to collect the discharged subject debt.

58. Concerned about the violations of her rights and protections that were expected by her bankruptcy discharge, Plaintiff sought the assistance of counsel to ensure that CARRINGTON'S collection efforts ceased.

59. Plaintiff has expended time consulting with her attorneys and has incurred attorney's fees as a result of CARRINGTON'S deceptive collection actions.

WHEREFORE, Plaintiff RUTH ANN HAWTHORNE respectfully requests that this Honorable Court enter judgment in her favor as follows:

a. Declaring that the practices complained of herein are unlawful and violate the aforementioned statutes;

b. Awarding Plaintiff statutory damages for the underlying FDCPA violations;

c. Ordering the deletion of adverse credit reporting, if any, related to the debt;

d. Awarding Plaintiff costs and reasonable attorney fees as provided under 15 U.S.C. §1692k; and

e. Awarding any other relief as this Honorable Court deems just and appropriate.

COUNT II
VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT

60. Plaintiff repeats and re-alleges paragraphs 1 through 59 as though fully set forth herein.

61. Plaintiff is a “person” as defined in ICFA, 815 ILCS 505/1(c).

62. CARRINGTON is engaged in “commerce” as defined in ICFA, 815 ILCS 505/1(f).

63. CARRINGTON violated 815 ILCS 505/2 by engaging in an unfair and deceptive act or practice by using fraud, deception, and misrepresentation in its attempt to collect from Plaintiff a debt protected by the Discharge Injunction afforded by the Bankruptcy Code, 11 U.S.C. §524.

64. The Illinois Consumer Fraud and Deceptive Business Practices Act (ICFA) states:

> Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. 815 ILCS 505/2.

65. CARRINGTON’S collection attempts represent the use of deception, fraud, and false pretense in an attempt to collect a debt because it was not collectable at the time the dunning letters were sent to Plaintiff.

66. CARRINGTON’S dunning letters were sent with knowledge of the discharge injunction. It was unfair to Plaintiff because the subject debt was not collectible as a matter of law.

67. CARRINGTON’S failure to abide by the discharge injunction constitutes deception and unfairness in regards to its collection attempts upon Plaintiff.

68. CARRINGTON’S confusing and deceptive dunning letters sent to Plaintiff demonstrates that CARRINGTON regularly engages in such practices designed to mislead debtors.

69. ICFA was designed to protect consumers from the unfair and deceptive acts committed by CARRINGTON.

70. CARRINGTON'S misrepresentations are unlawful, contradicting the intent of ICFA.

71. CARRINGTON intended for Plaintiff to rely on its misrepresentations by sending the dunning letter to induce payment on an uncollectable debt.

72. It was unfair for CARRINGTON to mislead Plaintiff into believing the subject debt was still owed, when it was not.

73. It was unfair for CARRINGTON to seek to collect the subject debt from Plaintiff through its misleading dunning letters.

74. It was unfair for CARRINGTON to attempt to induce Plaintiff into making payments on an uncollectable debt by sending the dunning letter to Plaintiff.

75. CARRINGTON intended that Plaintiff rely on its misrepresentation and Plaintiff did in fact rely on CARRINGTON'S misrepresentation as she was led to believe her bankruptcy had no legal effect and that she still owed the subject debt to CARRINGTON.

76. CARRINGTON'S demand was unfair and deceptive because it was systematically calculated to mislead Plaintiff into believing the subject debt was still owed, when in fact the subject debt was discharged in Plaintiff's bankruptcy.

77. ICFA further states:

> Any person who suffers actual damage as a result of a violation of ther Act committed by any other person may bring an action against such person. The court, in its discretion may award actual economic damages or any other relief which the court deems proper. 815 ILCS 505/10a

78. Plaintiff is entitled to relief pursuant to 815 ILCS 505/10a for the following reasons:

a. Plaintiff has suffered damages in the form of emotional distress and time spent consulting with her attorneys as a result of CARRINGTON'S unlawful collection practice.

b. An award of punitive damages is appropriate because CARRINGTON'S conduct was outrageous, willful and wanton, showed reckless disregard for the Plaintiff's rights, and Plaintiff had no choice but to submit to the dunning letter.

WHEREFORE, Plaintiff RUTH ANN HAWTHORNE respectfully requests that this Honorable Court enter judgment in her favor as follows:

a. Declaring that the practices complained of herein are unlawful and violate the aforementioned statute;

b. Awarding Plaintiff punitive damages, in an amount to be determined at trial, for the underlying violations;

c. Ordering the deletion of adverse credit reporting, if any, related to the debt;

d. Awarding Plaintiff's costs and reasonable attorney fees pursuant to 815 ILCS 505/10a(c);

e. Awarding any other relief as this Honorable Court deems just and appropriate.

COUNT III
VIOLATIONS OF THE BANKRUPTCY DISCHARGE INJUNCTION

79. Plaintiff repeats and re-alleges paragraphs 1 through 78 as fully set forth herein.

80. On February 23, 2015, the Plaintiff received an Order of Discharge of all debts included in her bankruptcy petition pursuant to 11 U.S.C. § 524(a)(2), including the "subject debt."

81. The discharge order effectuated a discharge of the debt to the Original Creditor, providing as follows:

> The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a

> debtor by mail, phone, or otherwise . . . to collect a discharged debt from the debtor. *Id.* at pg. 2.

82. Pursuant to 11 U.S.C. § 524(a)(2), the Order of Discharge invoked the protections of the discharge injunction, prohibiting any acts to collect upon the subject debtor by Citi, CARRINGTON, or any other party.

83. The debt owed to CARRINGTON is a debt that was discharged under the Bankruptcy Court's Order, and the Discharge Injunction is designed to prevent creditors and collectors from continuing to collect, assess or recover against the Plaintiff after the Order of Discharge.

84. Because CARRINGTON was notified of the Order of Discharge, its actions taken to collect on the subject debt while knowing that the subject debt had been discharged, constitute a willful violation of the Discharge Injunction.

85. "Section 524(a)(2) enjoins an act to collect a discharged debt, so a creditor that attempts to collect a discharged debt is in contempt of the bankruptcy court that issued the order of discharge." *Cox v. Zale Delaware, Inc.*, 239 F.3d 910, 915 (7th Cir. 2001).

86. CARRINGTON'S action were willful under 11 U.S.C. §524(a)(2)

87. Plaintiff suffered from CARRINGTON'S unlawful collection activities.

88. Plaintiff suffered from emotional distress due to CARRINGTON'S unlawful attempts to collect the subject debt, as she was led, by CARRINGTON'S collection activities, to believe her bankruptcy had no effect. The dunning letter was highly confusing to Plaintiff.

89. Plaintiff was unduly inconvenienced and harassed by CARRINGTON'S unlawful attempts to collect the subject debt.

90. Concerned about the violations of her rights and protections that were expected by her bankruptcy filing, Plaintiff sought the assistance of counsel to ensure that CARRINGTON'S collection efforts ceased.

91. Plaintiff has expended time consulting with her attorneys and has incurred attorney's fees as a result of CARRINGTON'S deceptive collection actions.

92. Plaintiff is entitled to actual damages, attorney's fees, and costs for Defendant's willful violations of the discharge injunction. Plaintiff is also entitled to punitive damages for Defendant's defiance of the Bankruptcy Code and its provisions.

WHEREFORE, Plaintiff, RUTH ANN HAWTHORNE, respectfully requests that this Honorable Court enter judgment in her favor as follows:

a. Declaring that the practices complained of herein are unlawful and violate the aforementioned statute;

b. Awarding Plaintiff punitive damages, in an amount to be determined at trial, for the underlying violations;

c. Ordering the deletion of adverse credit reporting, if any, related to the debt;

d. Awarding Plaintiff's costs, reasonable attorney fees, and punitive damages pursuant to 11 U.S.C. §524(a)(2); and

e. Awarding any other relief as this Honorable Court deems just and appropriate.

Dated: February 2, 2017

Respectfully Submitted,

/s/ Ronald A. Buch, Esq.
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